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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION and
ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:22-cv-02880-JSC

**CORRECTED ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
DEFENDANT MICROSOFT
CORPORATION AND DEFENDANT
ACTIVISION BLIZZARD, INC.'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION (CIVIL
L.R. 79-5)**

Date: TBA
Time: TBA
Dept.: Courtroom 8—19th Floor
Judge: Honorable Jacqueline S. Corley

Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendants Microsoft Corporation (“Microsoft”) and Activision Blizzard, Inc. (“Activision”) (collectively, “Defendants”) do respectfully move this Court for an order sealing the portions of Defendants’ Memorandum of Law in Opposition to Motion for Preliminary Injunction (“Opposition”), the Declaration of Beth Wilkinson in Support of Defendants’ Opposition, and certain supporting exhibits to the Opposition.

The proposed sealing in the chart below reflects Defendants’ good-faith efforts to narrowly seek sealing of only that information which is competitively sensitive and contained in internal documents, the public disclosure of which would cause injury to Defendants that cannot be avoided through any more restrictive alternative means.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request¹
Opposition	Page 1, portions of lines 7-8	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, market share analyses, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.
Opposition	Page 1, portion of line 28; Page 2, line 1	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential potential business partnerships, confidential internal decision-making processes, investment decisions, and strategic evaluation of forward-

¹ Legitimate private interests warrant the sealing of the Microsoft and Activision information in this chart, and the unsealing of the information would result in injury to Microsoft and Activision that cannot be avoided through any less restrictive alternative to sealing.

1	2	3	looking opportunities, which could be used to injure Microsoft if made publicly available.	
4	Opposition	Page 2, portion of lines 6-7	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and potential business partnerships, which could be used to injure Microsoft if made publicly available.
14	Opposition	Page 3, portion of line 9	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential investment decisions, market share analyses, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.
21	Opposition	Page 4, portion of line 25	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential revenue figures and projections, and confidential internal presentations containing business strategy, which could be used to injure Microsoft if made publicly available.

1	Opposition	Page 5, portions of lines 7, 10	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal figures and projections, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
9	Opposition	Page 6, portions of lines 1-5	Microsoft and Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal figures and projections, which could be used to injure Microsoft and Activision if made publicly available.
21	Opposition	Page 6, portions of lines 16- 17	Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, potential business partnerships, and internal presentations discussing business strategy, which

1			could be used to injure Activision if made publicly available.	
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3	Opposition	Page 7, portion of line 7, portion of lines 10-13, footnote 5	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, internal figures and projections, and assessment of the competitive landscape, which could be used to injure Microsoft if made publicly available.
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15	Opposition	Page 7, portions of lines 17-18	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, and market share analyses, which could be used to injure Microsoft if made publicly available.
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24	Opposition	Page 7, portions of lines 25-26; Page 8, portions of lines 1-2	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic
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			evaluation of forward-looking opportunities, assessment of the competitive landscape, and potential business partnerships, which could be used to injure Microsoft if made publicly available.
Opposition	Page 8, portions of lines 4-6	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and potential business partnerships, which could be used to injure Microsoft if made publicly available.
Opposition	Page 11, portions of lines 7-11, portion of footnote 7	Microsoft and Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and business strategy discussions, which could be used to injure Microsoft and Activision if made publicly available.

1	Opposition	Page 12, portion of footnote 9	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal figures and projections, which could be used to injure Microsoft and Activision if made publicly available.
13	Opposition	Page 13, portions of lines 3-7, footnote 10	Microsoft and Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business strategy discussions, and revenue figures and projections, which could be used to injure Microsoft and Activision if made publicly available.
26	Opposition	Page 14, portions of lines 7-9	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making

1			processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.	
2	Opposition	Page 15, portions of lines 13-16	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and potential business partnerships, which could be used to injure Microsoft if made publicly available.
3	Opposition	Page 16, portion of line 4	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.
4	Opposition	Page 16, portions of lines 21-25	Microsoft and Activision	This document contains non-public and highly sensitive information

1			including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.	
14	Opposition	Page 16, portions of line 26	Microsoft and Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.

1	Opposition	Page 17, portions of lines 1-2	Microsoft and Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.
16	Opposition	Page 17, portions of lines 4-5	Microsoft and Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.

1			could be used to injure Microsoft and Activision if made publicly available.	
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3	Opposition	Page 17, portions of lines 14-17	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, and assessment of the competitive landscape, which could be used to injure Microsoft if made publicly available.
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13	Opposition	Page 18, portions of lines 24-27	Microsoft and Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.
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28	Opposition	Page 19, portion of footnote	Microsoft	This portion contains non-

1	13		public and highly sensitive information including, but not limited to, confidential internal revenue figures and projections, which could be used to injure Microsoft if made publicly available.	
2	Opposition	Page 20, portions of lines 12-14, footnote 14	Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and potential business partnerships, which could be used to injure Activision if made publicly available.
3	Opposition	Page 21, portion of lines 7-8	Microsoft and Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal

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Opposition	Page 21, portion of lines 9-11	Microsoft and Activision	presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.
Opposition	Page 21, portion of lines 13-14	Microsoft and Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.

1			confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.	
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7	Opposition	Page 21, portions of lines 19-21; Page 22, portions of lines 1-2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and potential business partnerships, which could be used to injure Activision if made publicly available.
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18	Opposition	Page 22, portions of lines 17-19	Activision	This portion contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and internal business strategy, which could be used to injure Activision if made publicly available.
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28	Opposition	Page 23, lines 1-6	Microsoft	This portion contains non-

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10	Opposition, Ex. 2 (RX3166)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.				
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20	Opposition, Ex. 3	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal				
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5	Opposition, Ex. 7 (RX4043 - Kotick Dep. Tr.)	6	7
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1	2	3	4	5	6	7	business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.																
8	9	10	11	12	13	14	15	Opposition, Ex. 9 (RX4013 - Schnaknberg IH Tr.)	16	17	18	19	20	21	22	23	Activision	24	25	26	27	28	This investigational hearing transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward- looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
24	25	26	27	28	Opposition, Ex. 11 (RX1146)	Entire document	Microsoft	Microsoft	24	25	26	27	28	This document contains non-public and highly sensitive information including, but not limited to, confidential assessment of the competitive landscape, which could be used to injure Microsoft if									

			made publicly available.
Opposition, Ex. 12 (RX1251)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential assessment of the competitive landscape, which could be used to injure Microsoft if made publicly available.
Opposition, Ex. 15 (RX1038)	Entire document	Activision	This document contains non-public and highly sensitive information including, but not limited to, confidential information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, and business partnerships, which could be used to injure Activision if made publicly available.
Opposition, Ex. 24 (RX1060)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes and investment decisions, which could be used to injure Microsoft if made publicly available.
Opposition Ex. 25 (RX1233, TX305)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential internal

1			decision-making processes and assessment of the competitive landscape, which could be used to injure Microsoft if made publicly available.	
5	Opposition, Ex. 27 (RX4039 - Nadella Dep. Tr.)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward- looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.
21	Opposition, Ex. 28 (RX4017 – Hampton Dep. Tr.)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward- looking opportunities, market share analyses, assessment of the

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
															competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.												
	Opposition, Ex. 29 (RX1141)						Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes and investment decisions, which could be used to injure Microsoft if made publicly available.																		
	Opposition, Ex. 30 (RX1144)						Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes and investment decisions, which could be used to injure Microsoft if made publicly available.																		
	Opposition, Ex. 31 (RX4002 – Choudhry IH Tr.)						Entire document	Microsoft	This investigational hearing transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-																		

1			looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.	
10	Opposition, Ex. 32 (RX4038 – Gluckstein Dep. Tr.)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward- looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.
26	Opposition, Ex. 33 (RX4000 – P. Spencer Tr. Vol. I)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but

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													not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.
14	Opposition, Ex. 34 (RX4019 – T. Stuart Tr.)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but not limited to, confidential internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.									

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Opposition, Ex. 37 (RX1212)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
Opposition, Ex. 38 (RX3019)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
Opposition, Ex. 39 (RX1221)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
Opposition, Ex. 40 (RX1238)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
Opposition, Ex. 41	Entire document	Microsoft	This document contains non-public and highly

1 2 3 4 5	(RX1211)		sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.	
6 7 8 9 10 11 12	Opposition, Ex. 42 (RX1213)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
13 14 15 16 17 18	Opposition, Ex. 43 (RX1245)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
19 20 21 22 23 24 25	Opposition, Ex. 44 (RX1222)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Microsoft if made publicly available.
26 27 28	Opposition, Ex. 48 (Lee Report)	Entire Document	Microsoft and Activision; Designated as Confidential in FTC's Filing	This document contains non-public and highly sensitive information including, but not limited to, information reflecting

1			internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.	
12	Opposition, Ex. 53 (RX4000, RX4001, Spencer IH Tr.)	Entire document	Microsoft	This investigational hearing transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.

1	Opposition, Ex. 54 (RX1044)	Entire document	Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
13	Opposition, Ex. 55 (RX3095)	Entire document	Activision	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
25	Opposition, Ex. 58 (Carlton Rep.)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic

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1 2 3 4 5 6 7 8 9 10 11 12 13	Decl.)	FTC's Filing	including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft and Activision if made publicly available.	
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Opposition, Ex. 68 (RX4034 – Lawyer Dep. Tr.)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly

			available.
Opposition, Ex. 69 (RX4045 – Schnakenberg Dep. Tr.)	Entire document	Activision	This deposition transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Opposition, Ex. 70 (RX1196)	Entire document	Microsoft	This document contains non-public and highly sensitive information including, but not limited to, confidential information reflecting internal decision-making processes, investment decisions, and strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Opposition, Ex. 71 (Choudhry Dep. Tr.)	Entire document	Microsoft	This deposition transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward- looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Microsoft if made publicly available.
17 18 19 20 21 22 23 24 25 26 27 28	Opposition, Ex. 72 (Zerza IH Tr.)	Entire document	Activision	This investigational hearing transcript contains non-public and highly sensitive information including, but not limited to, information reflecting internal decision-making processes, strategic evaluation of forward- looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal

			presentations discussing business strategy, which could be used to injure Activision if made publicly available.
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ARGUMENT

I. Sealing the Opposition and Supporting Documents Is Warranted Under Ninth Circuit Precedent as They Contain Defendants' Confidential Business Information

In the Ninth Circuit, “[p]arties seeking to seal judicial records relating to motions that are ‘more than tangentially related to the underlying cause of action,’ bear the burden of overcoming the presumption with ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.’” *Lenovo (United States) Inc. v. IPCom GmbH & Co., KG*, 2022 WL 2313948, at *1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[T]he court must ‘conscientiously [] balance the competing interests’ of the public and the party who seeks to keep certain judicial records secret.’”). Courts in this Circuit regularly find that sealing is warranted where the records or information that are sought to be sealed could be used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, No. CV 13-08080 DDP (VBK), 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (stating that “district courts in this Circuit have sealed records containing ‘information about proprietary business operations, a company’s business mode or agreements with clients,’ [and] ‘internal policies and strategies’”) (internal citations omitted).

“The Ninth Circuit has explained that ‘in general, compelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.’” *Velasco*, 2017 WL 445241, at *2 (quoting *Elec. Arts*, 298 F. App’x at 569); see also *Elec. Arts*, 298 F. App’x at 569 (“A ‘trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors

1 who do not know or use it.””) (citation omitted). A court has “broad latitude” to grant protective orders
 2 to prevent disclosure of “many types of information, including, but not limited to, trade secrets or other
 3 confidential research, development, or commercial information.” *Phillips ex rel. Estates of Byrd v. Gen.*
 4 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

5 In determining whether a document should be filed under seal, courts consider, among other
 6 things, the measures taken to guard the information’s secrecy and the value of the information to the
 7 business or its competitors. *E.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
 8 1212 (9th Cir. 2002). Here, Defendants seek to seal narrowly tailored excerpts of the Opposition, which
 9 reference and reflect, among other things, confidential, proprietary information relating to Defendants’
 10 internal decision-making processes, investment decisions, strategic evaluation of forward-looking
 11 opportunities, market share analyses, assessment of the competitive landscape, business partnerships,
 12 terms of existing confidential agreements, revenue figures and projections, and internal presentations
 13 discussing business strategy. The disclosure of this information could be used to injure Defendants if
 14 made publicly available.

15 **II. Sealing the Opposition and Supporting Materials Is Necessary to Protect Defendants’ 16 Confidential and Proprietary Business Information**

17 Defendants seek to maintain under seal portions of the Opposition and supporting materials, as
 18 they contain Defendants’ non-public and highly sensitive information from documents obtained during
 19 the course of the FTC’s investigation and during litigation discovery. Examples of such confidential
 20 information include, but are not limited to, Defendants’ internal decision-making processes, investment
 21 decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of
 22 the competitive landscape, business partnerships, terms of existing confidential agreements, revenue
 23 figures and projections, and internal presentations discussing business strategy. Disclosure of this
 24 information would provide Defendants’ competitors with private data about Defendants’ performance
 25 and business strategy, which could harm Defendants’ competitive standing. *See Cont'l Auto. Sys. v.*
26 Avanci, LLC, No. 19-cv-02520-LHK, 2019 WL 6612012, at *4 (N.D. Cal. Dec. 5, 2019). Thus, the
 27 unsealing of this highly confidential and sensitive information would cause injury to Defendants that
 28 cannot be avoided through less restrictive alternatives.

Finally, Defendants provided the FTC with confidential business information cited in the Opposition and supporting materials pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-Scott-Rodino Act or the FTC Act. *See* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-(g). In similar cases, the FTC has acknowledged the need to maintain the confidentiality of a party's confidential business information that has been provided to the FTC via a regulatory request. *See, e.g.,* *FTC v. Lockheed Martin Corp.*, 2022 WL 1446650, at *2 (D.D.C. Jan. 25, 2022) (“According to the FTC, sealing the complaint is appropriate . . . because the filing includes confidential information submitted . . . pursuant to ‘statutory and regulatory guarantees of confidentiality.’ . . . The requested sealing covers only confidential information and is, according to the FTC, required by regulation.”).

III. Conclusion

As stated above, compelling reasons justify Defendants' request for sealing Defendants' confidential business information contained in the Opposition and supporting materials. Defendants respectfully request that this Court grant its Motion to Seal. In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of the Opposition and supporting materials accompany this Administrative Motion. In accordance with Civil Local Rule 7-11, Defendants have also filed a Proposed Order herewith.

Dated: June 17, 2023

Respectfully submitted,

By: /s/ Beth Wilkinson

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